

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STEVEN S. NOVICK,

Plaintiff,

-against-

AXA NETWORK, LLC, and  
AXA ADVISORS, LLC,

Defendants.  
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AXA NETWORK, LLC, and  
AXA ADVISORS, LLC,

Counter Claimants,

-against-

STEVEN S. NOVICK,

Counter Defendant.  
-----X

KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE

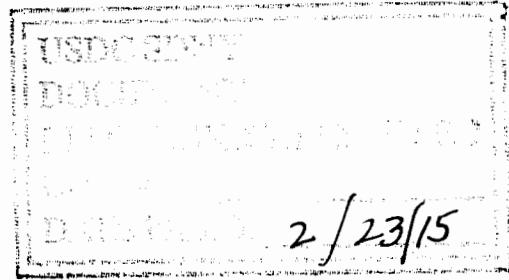
TO THE HONORABLE ALVIN K. HELLERSTEIN, UNITED STATES DISTRICT JUDGE

### BACKGROUND

By an order, dated December 31, 2014, your Honor denied the defendants' objections to the Court's October 22, 2014 Memorandum and Order imposing sanctions on the defendants, and directed the Court to recommend an adverse inference jury instruction appropriate for spoliation of evidence. (Docket Entry No. 267).

### RECOMMENDATION

The Court recommends the following adverse inference jury instruction:



## DESTRUCTION OF EVIDENCE

The defendants had a duty to retain audio recordings containing communications via trading desk telephone lines, for the period August 28-31, 2006, and September 8-November 5, 2006. The defendants destroyed those audio recordings. You may infer that the information contained in those audio recordings is unfavorable to the defendants.

## FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Alvin K. Hellerstein, 500 Pearl Street, Room 1050, New York, New York, 10007, and to the chambers of the undersigned, 40 Centre Street, Room 425, New York, New York, 10007. Any requests for an extension of time for filing objections must be directed to Judge Hellerstein. ***Failure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review.*** See Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); Cephas v. Nash, 328 F.3d 98, 107 (2d Cir. 2003).

Dated: New York, New York  
February 23, 2015

Respectfully submitted,

  
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KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE